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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/828,949	04/21/2004	Willis J. Mullet	WAY.P.US0071	7173

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EXAMINER

COULTER, ANDREA

ART UNIT	PAPER NUMBER
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3634

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/08/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/828,949	Applicant(s) MULLET ET AL.	
	Examiner Andrea L. Coulter	Art Unit 3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>8/19/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 8/19/04 was considered by the examiner.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

There are numerous indefiniteness issues in the claims; although an effort has been made to point out all of them, a thorough editing of the claims is suggested.

Claims 1-19, are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 2 and 6 recite "said motor"; claim 4 recites "the axial extension". There is no antecedent basis for these limitations.

In claim 6, does the "removable hub portion" make up part of the "hub" that defines the bore? Are the "removable gear portion" and the "removable hub portion" separately removable from the gear segment, or is the "gear segment" as a whole removable, as defined in claim 1?

Claim 7 recites "said removable portion of said rim". There is no antecedent basis for this limitation. Also, is the removable "first half" of the hub part of the "gear segment", as disclosed in the drawings, or is it a different removable part? If the former, is the "first

half" of the hub the same as the "removable hub portion"? Is the "removable wall portion" also part of the "gear segment"?

Claims 9 and on recite "said removable rim portion" and "said first hub half", "said first and second hub halves", "said hub halves", and similar recitations. There is no antecedent basis for these limitations. Consistency should be maintained.

In claim 14, line 2, does "it" refer to the "lip" or the "outwardly facing surface"?

Claims 15 and on recite "said lips", "said receivers" and/or "the lips". There is no antecedent basis for these limitations. Also, it is suggested that the "a pair of lips" recited in claim 15 be changed to "a first pair of lips", and that the "a pair of lips" recited in claim 16 be changed to "a second pair of lips" for clarity.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

As best understood, claims 1, 2, 5-9, 20-23 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Vincenzi (US 5,698,073). Vincenzi discloses an operator used in connection with a door having a counterbalance system including an axle 22, comprising a motor 38, a gear assembly 90 with a bore or channel that receives the axle, and a gear segment 94 that is removable to radially open the gear

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assembly and allow insertion of the axle. A drive gear 80 rotates with the motor and engages the gear assembly 90 through a drive train 88. The gear segment 94 can be slidably received and can be removed in a direction parallel to the axle. The gear assembly includes a hub, a rim and a gear surface formed on the rim and engaged with the drive gear. The gear segment includes a removable gear portion and a removable hub portion. The hub is divided into two halves. See figure 3 of the patent. The gear segment is attached to the gear assembly by fasteners (98, 96) attached at tabs.

The reference thus reads on the claims.

Claims 27-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Mullet (US 6,568,454). Mullet discloses an operator used with a counterbalance system having an axle, comprising a motor 340, a worm wheel 397 engaging the motor, and a coil spring 401 located coaxially with the worm wheel and engaged to counterbalance the weight of the motor toward an unlocked position

The reference thus reads on the claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 24 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vincenzi in view of Mullet (454). All of the elements of the instant application are

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disclosed above except that Vincenzi does not disclose the motor as pivotally mounted. However, Mullet teaches a motor used with a door operator and counterbalance system that is pivotally mounted. The motor engages with a worm gear-rod and coaxial spring that allow it to move the operator to a locked or unlocked position. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the operator system of Vincenzi with the pivoting motor, worm gear and spring of Mullet, since the pivoting motor setup allows the operator to lock and unlock easily and automatically.

The references thus read on the claims.

Allowable Subject Matter

Claims 3, 4 and 10-19 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and if rewritten in independent form to include all of the limitations of the base claim and any intervening claims.

Conclusion


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Mullet (US 6,588,156; 6,739,372; 6,845,804; 6,851,465; and 6,880,609) discloses elements similar to those in the instant application, as does Voegel (US 4,191,237).

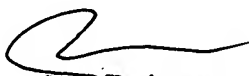
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea L. Coulter whose telephone number is (571) 272-1679. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on (571)272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Andrea L. Coulter
Patent Examiner


Jerry Redman
Primary Examiner